

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

FOR: HEALTH CARE FINANCING ADMINISTRATION

1. TRANSMITTAL NUMBER:

0 1 — 0 1 4

2. STATE:

North Dakota

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL
SECURITY ACT (MEDICAID)TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

July 1, 2001

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:

42 CFR 447 Subpart C

7. FEDERAL BUDGET IMPACT:

a. FFY D el - per Sheldon Wolfb. FFY D el \$

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Attachment 4.19-D, Sub-section 2, pages 1, 2,
2a, 6, 7, 8, 10, 11, 12, 13, 14, 17, 18, 19, 20,
21, 21a, 22

Attachment 4.19-D, Sub-section 2, page 22a

See attached9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable):Attachment 4.19-D, Sub-section 2, pages 1,
2, 2a, 6, 7, 8, 10, 11, 12, 13, 14, 17, 18,
19, 20, 21, 21a, 22

New

10. SUBJECT OF AMENDMENT:

Payment for long term care facility services (intermediate care facilities for the
mentally retarded)

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT☐ OTHER, AS SPECIFIED:☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL:

Sheldon Wolf

13. TYPED NAME:

David J. Zentner

14. TITLE:

Director, Medical Services

15. DATE SUBMITTED:

September 28, 2001

16. RETURN TO:

David J. Zentner
Director, Medical Services
ND Department of Human Services
600 E Boulevard Ave Dept 325
Bismarck ND 58505**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED:

October 4, 2001

18. DATE APPROVED:

December 12, 2001

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

July 1, 2001

20. SIGNATURE OF REGIONAL OFFICIAL:

Spencer K. Ericson

21. TYPED NAME:

Spencer K. Ericson

22. TITLE:

Acting Associate Regional Administrator

23. REMARKS:

POSTMARK: September 28, 2001

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8. Page number of the plan section

Attachment 4.19-D, Sub-section 2, pages 23,
25, 26, 33, A-2, A-3

Attachment 4.19-D, Sub-section 2, page A-3a

Attachment 4.19-D, Sub-section 2, pages A-4,
B-2, B-3, B-4, C-4, C-5, C-6, C-7

9. Page number of the superseded plan

Attachment 4.19-D, Sub-section 2, pages 23,
25, 26, 33, A-2, A-3

New

Attachment 4.19-D, Sub-section 2,
A-4, B-2, B-3, B-4, C-4, C-5, C-6, C-7

Section 1 - Definitions

In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Allowable cost" means the program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations.
3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable which were created or acquired in providing services.
4. "Board" means all food and dietary supply costs.
5. "Clients" means eligible developmentally disabled persons on whose behalf services are provided or purchased.
6. "Consumer" means a developmentally disabled person.
7. "Consumer representative" means a parent, guardian, or relative, to the third degree of kinship, of a developmentally disabled person.
8. Vacated
9. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of an institution are divided for purposes of cost assignment and allocations.
10. "Day Supports" means a day program to assist individuals acquiring, retaining, and improving skills necessary to successfully reside in a community setting. Services may include assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills; provision of social, recreational, and therapeutic activities to maintain physical, recreational, personal care, and community integration skills; development of non-job task oriented prevocational skills such as compliance, attendance, task completion, problem solving, and safety; and supervision for health and safety.
11. "Department" means department of human services.
12. "Documentation" means the furnishing of written records including, original invoices, contracts, time cards, and work papers prepared to complete reports or for filing with the department.

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13. "Facility-based" means a workshop for individuals with developmental disabilities licensed by the department to provide day services. This definition is not to be construed to include areas of the building determined by the department to exist primarily for nontraining or for production purposes
14. "Fair market value" means value at which an asset could be sold in the open market in an arms-length transaction between unrelated parties.
15. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
16. "Historical cost" means those costs incurred and recorded on the facility's accounting records as a result of an arm-length transaction between unrelated parties.
17. "Individual service plan " means an individual plan which identifies service needs of the eligible client and the services to be provided, and which is developed by the mental retardation-developmental disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.
18. "Interest" means the cost incurred with the use of borrowed funds.
19. "Net investment in fixed assets" means the cost, less accumulated depreciation and the balance of notes and mortgages payable.
20. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.
21. "Related organization" means an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the action or policies of an organization or institution.
22. "Room" means the cost associated with the provision of shelter and the maintenance thereof, including depreciation and interest or lease payments of a vehicle used for transportation of residents.
23. "Service" means the provision of living arrangements and programs of daily activities subject to licensure by the department.
24. "Staff training" means an organized program to improve staff performance.

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25. "Units of service" for billing purposes means:

- a. In residential settings, one individual served for one 24-hour day;
- b. In day service settings, one individual served for one hour; and
- c. In extended services, one individual served for one hour of job coach intervention.

The day of admission and the day of death, but not the day of discharge, are treated as a day served for residential services.

26. Vacated.

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- c. To properly facilitate auditing, the accounting system must be maintained in such a manner that cost accounts will be grouped by cost center and be readily traceable to the cost report.
 - d. The forms for annual reporting for reimbursement purposes must be the report forms designated by the department. The statement of budgeted costs must be submitted to the disability services division within sixty days of the date of the letter containing the budget instructions provided by the department reflecting budgeted costs and units of service for establishing an interim rate in the subsequent year. The statement of actual costs must be submitted on or before the last day of the third month following the end of the facility's normal accounting year. The report must contain the actual costs, adjustments for nonallowable costs, and units of service for establishing the final rate.
 - e. The mailing of cost reports by registered mail, return receipt requested, will ensure documentation of the filing date.
 - f. Costs reported must include all actual costs and adjustments for nonallowable costs. Adjustments made by the audit unit, to determine allowable cost, though not meeting the criteria of fraud or abuse on their initial identification, may be considered as possible fraud or abuse. The audit unit will forward all such items identified to the appropriate investigative unit.
3. Auditing. In order to properly validate the accuracy and reasonableness of cost information reported by the service provider, the department will provide for audits as necessary.
4. Penalties.
- a. If a provider fails to file the required statement of budgeted costs and cost report on or before the due date, the department may invoke the following provisions:
 - (1) After the last day of the first month following the due date, there will be a nonrefundable penalty of ten percent of any amount claimed for reimbursement.
 - (2) The penalty continues through the month in which the statement or report is received.
 - b. At the time of audit and final computation for settlement, the department may invoke a penalty of five percent of a provider's administrative costs for the period of deficiency if:

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- (1) Poor or no daily census records are available to document client units. Poor census records exist if those records are insufficient for audit verification of client units against submitted claims for reimbursement.
 - (2) After identification and notification through a previous audit, a provider continues to list items exempted in audit as allowable costs on the cost report.
- c. Penalties may be separately imposed for each violation.
 - d. A penalty may be waived by the department upon a showing of good cause.

Section 9 - Rate Payments

1. Interim rates based on factors including budgeted data, as approved, will be used for payment of services during the year.
2. Income from client production must be applied to client wages and the cost of production. The department will not participate in the gains or losses associated with client production conducted pursuant to the applicable provision of 29 CFR 525.
3. The final rate established is payment of all allowable, reasonable, and actual costs for all elements necessary to the delivery of a basic service to eligible clients subject to limitations and cost offsets of this chapter.
4. No payments may be solicited or received by a provider from a client or any other person to supplement the final rate of reimbursement.

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5. The rate of reimbursement established must be no greater than the rate charged to a private payor for the same or similar service.
6. The department will determine interim and final rates of reimbursement for continuing contract providers based upon cost data from the:
 - a. Submission requirements of section 2; and
 - b. Field and desk audits.
7. Rates of continuing service providers will be based on the following:
 - a. Rate for continuing service providers, who have had no increase in the number of clients the provider is licensed to serve, will be based upon ninety-five percent of the rated occupancy established by the department or actual occupancy, whichever is greater.
 - b. Rates for continuing service providers, who have an increase in the number of clients the provider is licensed to serve in an existing service, will be based upon:
 - (1) Subdivision a for the period until the increase takes effect; and
 - (2) Ninety-five percent of the projected units of service for the remaining period of the fiscal year based upon an approved plan of integration or actual occupancy, whichever is greater.
 - c. When establishing the final rates, the department may grant nonenforcement of subdivisions a and b of subsection 7 when it determines the provider implemented cost containment measures consistent with the decrease in units, or when it determines that the failure to do so would have imposed a detriment to the well-being of its clients.
 - (1) Acceptable cost containment measures include a decrease in actual salary and fringe benefit costs from the approved salary and fringe benefits costs for the day service or group home proportionate to the decrease in units.
 - (2) Detriment to the well-being of clients includes a forced movement from one group home to another or obstructing the day service movement of a client in order to maintain the ninety-five percent rated occupancy requirement.

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1. Retrospective ratesetting requires that an interim rate be established prior to the year in which it will be effective. The determination of a final rate for all services begins with the reported cost of the provider's operations for the previous fiscal year. Once it has been determined that reported costs are allowable, reasonable, and client-related, those costs are compared to the reimbursements received through the interim rate.
2.
 - a. Settlements will be made through a recoupment or refund to the department for an overpayment, or an additional payment to the provider for an underpayment.
 - b. Interprovider settlements between intermediate care facilities for the mentally retarded and day services will be made through a recoupment or refund to the department from the day service provider to correct an overpayment; or a payout to the intermediate care facilities for the mentally retarded, for the day service provider, to correct an underpayment.
3. Limitations
 - a. The department shall accumulate and analyze statistics on costs incurred by providers. Statistics may be used to establish reasonable ceiling limitations for needed services. Limitations may be established on the basis of cost of comparable facilities and services, or audited costs, and may be applied as ceilings on the overall costs, on the costs of providing services, or on the costs of specific areas of operations. The department may implement ceilings at any time, based upon the statistics available, or as required by guidelines, regulations, rules or statutes.
 - b. Providers, to maintain reasonable rates of reimbursement, must deliver units of service at or near their rated capacity. Upon a finding by the department that an excess idle capacity exists and has existed, the cost of which is borne by the department, the provider will be notified of the department's intention to reduce the level of state financial participation or invoke the cancellation provisions of the provider agreement. The provider must, within ten days of such notification, demonstrate, to the satisfaction of the department, that the department should not invoke its authority under this provision, or accept the department's finding.
 - c. Providers will not be reimbursed for services, rendered to clients, which exceed the rated occupancy of any facility as established by a fire prevention authority.
 - d. Providers of residential services must offer services to each resident three hundred sixty-five days per year (except for leap years in which three hundred sixty-six days must be offered). Costs

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reimbursement will be established on the same basis. Providers will not be reimbursed for those days in which services are not offered to residents.

- e. Providers of day services must offer services to each client eight hours per day two hundred sixty days per year less any state-recognized holidays, except for leap years in which two hundred sixty-one days may be offered. The budgeted units of service for a full-time client will be equivalent to two hundred thirty days per year at eight hours per day.
- f. (1) Days of services in facilities subject to the application of subdivision d must be provided for a minimum of three hundred thirty-five days per year per client. A reduction of payment to the provider in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability program administrator determines that a failure to meet the minimum was justified.
- (2) For purposes of this subdivision, the fiscal year of the facility will be used, and all days before the admission, or after the discharge of the resident or client will be counted towards meeting the minimum.

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- g. Salary and fringe benefit cost limits, governing the level of state financial participation, may be established by the department by calculating:

- (1) Comparable salaries and benefits for comparable positions, by program size and numbers served, and programs in and out of state;
- (2) Comparable salaries and benefits for comparable positions in state government;
- (3) Comparable salaries and benefits for comparable positions in the community served by the provider; or
- (4) Data from paragraphs 1, 2, and 3, taken in combination.

By using private funds, providers may establish higher salaries and benefit levels than those established by the department.

- h. Management fees and costs may not exceed the lesser of two percent of administrative costs or the price of comparable services, facilities, or supplies purchased elsewhere, primarily in the local market.

Section 11 - Cost Report

1. The cost report provides for the identification of the allowable expenditures and basic services subject to reimbursement by the department. Where costs are incurred solely for a basic service, the costs must be assigned directly to that basic service. Where costs are incurred jointly for two or more basic services, the costs will be allocated as follows:
 - a. Personnel. The total cost of all staff identified in payroll records must be listed by position title and distributed to basic services subject to the approval of staff client ratios by the department. Time studies may be performed for one week at least quarterly for allocation. Where no time studies exist, the applicable units must be used for allocation. Where there is no definition of a unit of service, the unit of service for residential settings shall be used.
 - b. Fringe benefits. The cost of fringe benefits must be allocated to basic services based on the ratio of the basic service personnel costs to total personnel costs. Personnel costs on which no fringe benefits are paid will be excluded.

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- c. Equipment. The total cost of all equipment, whether rented, leased, purchased, or depreciated, must be distributed to basic service based on usage or applicable units.
- d. Real property expense. The total of all property costs, whether rented, leased, purchased, or depreciated, must be allocated based on direct square footage. Where multiple usage of direct use area occurs, the allocation will first be done by square footage and then by applicable units.
- e. Travel. The total of all unassigned travel costs, which must not exceed the state rate of reimbursement, must be included in administrative costs.
- f. Supplies. The total of all unassigned supply costs must be included with administrative costs.
- g. Food services. The total of all food costs should be allocated based on meals served. Where the number of meals served has not been identified, applicable units must be used.
- h. Insurance and bonds. The total of all such costs except insurance costs representing real property expense or vehicle insurance costs applicable to vehicles used for one or more basic services, must be included as administrative costs.
- i. Contractual services. The total of all contractual costs must be allocated based upon applicable units or, if appropriate, included as part of the administrative costs.
- j. Vacated.
- k. General client costs. Total general client expenses must be allocated to service categories, exclusive of production, room, board, supported living arrangements, family support services, and extended services based on actual units of service. When determining the day support ratio of general client costs, total day support units will be divided by eight and rounded to the nearest whole number.
- l. Administrative costs. Total administrative expenses may be allocated to all service categories, on time studies done in compliance with subdivision a. If time studies are not available, total administrative expenses must be allocated to all service categories, exclusive of room, board, and production, based upon the ratio of the basic service cost to total costs excluding administrative and production costs. The percentage calculated for residential services must be based on total costs for training, room, and board for the specific residential service with the allocation made only to training.

2. Identification of the means of financing is to be as follows:
 - a. Budget reports require the disclosure of all revenues currently used to finance costs and those estimated to finance future costs, inclusive of the provider's estimate of state financial participation.
 - b. Revenues must be distributed on the appropriate budget report by program. Where private contributions are used to supplement or enrich services, the sum may be distributed accordingly. Where contributions are held in reserve for special purposes, it may be described by narrative.
 - c. The disclosure of contract income and production costs is required to establish a rate of reimbursement supplemental to, and not duplicative of, these revenues and costs.
 - d. State financial participation in the habilitative costs associated with day supports shall not include production costs.

Section 12 - Adjustment to Cost and Cost Limitation

1. Providers under contract with the department to provide services to developmentally disabled persons must submit no less than annually a statement of actual costs on the cost report.
2. Providers must disclose all costs and all revenues.
3. Providers must identify income to offset costs where applicable in order that state financial participation not supplant or duplicate other funding sources. These sources, and the cost to be offset, must include, but are not limited to, the following:
 - a. Fees, the cost of the service or time for which the fee was imposed excluding those fees based on cost as established by the department.

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Section 13 - Nonallowable Costs

Nonallowable costs include:

1. Advertising to the general public exclusive of procurement of personnel and yellow page advertising limited to the information furnished in the white page listing.
2. Amortization of noncompetitive agreements.
3. Bad debt expense.
4. Barber and beautician services.
5. Basic research.
6. Vacated
7. Compensation of officers, directors, or stockholders other than reasonable and actual expenses related to client services.
8. Concession and vending machine costs.
9. Contributions or charitable donations.
10. Corporate costs, such as organization costs, reorganization costs, and other costs not related to client services.
11. (Vacated)

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12. Costs for which payment is available from another primary third party payor or for which the department determines that payment may lawfully be demanded from any source.
13. Costs of functions performed by clients in a residential setting which are typical of functions of any person living in their own home, such as keeping the home sanitary, performing ordinary chores, lawnmowing, laundry, cooking, and dishwashing. These activities shall be an integral element of an individual program plan consistent with the client's level of function.
14. Costs of participation in civic, charitable, or fraternal organizations except local chambers of commerce.
15. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to vendor.
16. Costs which are incurred by the provider's subcontractors, or by the lessor of property which the provider leases, and which becomes an element in the subcontractor's or lessor's charge to the provider, if such costs would have not been allowable under this section had they been incurred by a provider directly furnishing the subcontracted services, or owning the leased property.
17. Costs, exceeding the approved budget, unless the written prior approval of the department has been received.
18. Depreciation on assets acquired with federal or state grants.
19. Education costs incurred for the provision of services to clients who are, could be, or could have been, included in a student census. Education costs do not include costs incurred for a client, defined as a "child with disabilities" by subsection 2 of North Dakota Century Code section 15-59-01, who is enrolled in a school district pursuant to an interdepartmental plan of transition.

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20. Vacated
21. Employee benefits not offered to all full-time employees.
22. Entertainment costs.
23. Equipment costs for any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates to the satisfaction of the department that any particular use of the equipment was related to client services. Equipment used for client services, other than developmental disabilities contract services, will be allocated by time studies, mileage, client census, percentage of total operational costs, or otherwise as determined appropriate by the department.
24. Expense or liabilities established through or under threat of litigation against the state of North Dakota or any of its agencies; provided, that reasonable insurance expense shall not be limited by this subsection.
25. Federal and other governmental income taxes.
26. Fringe benefits exclusive of Federal Insurance Contributions Act, unemployment insurance, medical insurance, workers compensation, retirement, long-term disability, dental, vision, life, and other benefits which have received written prior approval of the department.
27. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose.
28. Funeral and cemetery expenses.
29. Goodwill.
30. Home office costs when unallowable if incurred by facilities in a chain organization.
31. Housekeeping staff or services costs.
32. Travel not directly related to industry conferences, state or federally sponsored activities, or client services.
33. Interest cost related to money borrowed for funding depreciation.
34. Items or services, such as telephone, television, and radio, which are located in a client's room and furnished primarily for the convenience of the clients.
35. Key man insurance.

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36. Laboratory salaries and supplies.
37. Staff matriculation fees and fees associated with the granting of college credit.
38. Meals and food service in day service programs.
39. Membership fees or dues for professional organizations exceeding five hundred dollars in any fiscal year.
40. Miscellaneous expenses not related to client services.
41. Vacated
42. a. Except as provided in subdivisions b, c, and d payments to members of the governing board of the provider, the governing board of a related organization, or families of members of those governing boards, including spouses and persons in the following relationship to those members or to spouses of those members: parent, stepparent, child, stepchild, grandparent, step-grandparent, grandchild, step-grandchild, brother, sister, half brother, half sister, stepbrother, and stepsister.
- b. Payments made to a member of the governing board of the provider to reimburse that member for reasonable and actual expenses incurred by that member in the conduct of the provider's business may be allowed.
- c. Payments for a service or product unavailable from another source at a lower cost may be allowed except that this subdivision may not be construed to permit the employment of any person described in subdivision a except as provided in subdivision d.
- d. For-profit organizations may compensate working owners and family members described in subdivision a for time worked on behalf of the organization.
- (1) The amount of total annual compensation allowed for an owner or owners acting in an executive or administrative capacity is limited as follows:

(a) Number of Clients Served	Compensation Limit
1-15	\$25,000
16-30	\$35,000
31-45	\$45,000
46+	\$50,000

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- (b) The compensation limit in subparagraph (a) is the limitation on the aggregate compensation allocable to North Dakota facilities of all owners in any one year regardless of the number of owners performing work for the organization.
 - (c) Total compensation for owners who perform services for facilities in more than one state must be prorated on the basis of individual time distribution records.
 - (d) The compensation limit is inclusive of all salaries and related fringe benefits, and may not be construed to be an addition or enhancement to the budget.
- (2) Compensation for a family member working in a direct care, housekeeping, maintenance, dietary, or clerical position is limited to the wage paid to a nonrelated employee, with the same qualifications and experience, working in a similar job function for the organization.
43. Penalties, fines, and related interest and bank charges other than regular service charges.
44. Personal purchases.
45. Pharmacy salaries.
46. Physician and dentist salaries.
47. a. For facility-based day supports programs, production costs, such as client salaries and benefits, supplies, and material representing unfinished or finished goods or products that are assembled, altered, or modified.
- b. For non-facility-based day supports programs, production costs, such as client salaries and benefits, supplies, and materials representing unfinished or finished goods or products that are assembled, altered, or modified, square footage, and equipment.
- c. For extended services, in addition to subdivisions a and b, costs of employing clients, including preproduction and postproduction costs for supplies, materials, property, and equipment, and property costs other than an office, office supplies, and equipment for the supervisor, job coach, and support staff.
- d. Total production-related legal fees in excess of five thousand dollars in any fiscal period.
48. Religious salaries, space, and supplies.

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